UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMERICAN MUNICIPAL POWER, :

INC.,

:

Employer, :

:

and,

Case No. 10-RC-213684

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-

CIO, LOCAL UNION NO. 816,

:

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Petitioner.

EMPLOYER'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

I. <u>INTRODUCTION</u>

Pursuant to Section 102.67 of the National Labor Relations Board's ("Board") Rules and Regulations, American Municipal Power, Inc. ("AMP") respectfully requests review of the Regional Director's February 15, 2018¹ Decision and Direction of Election ("Decision") and resulting March 6 certification of the election held on February 23. The Decision incorrectly directed an election in an inappropriate bargaining unit that apparently included AMP Operators from other facilities working at the Smithland facility on temporary assignments. The Decision approved the unit even though AMP and the Petitioner International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 816 ("Petitioner") **agreed** that these other Operators did not share a community of interest with the eight Operators who should be in the bargaining unit. The Decision even failed to include a general exclusion of "all other employees" from the unit description included in the petition itself and agreed to by AMP and Petitioner at the hearing.

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¹ Unless otherwise noted, all dates are in 2018.

The Decision approved an inappropriate unit based on an incorrect legal conclusion that disagreements over the inclusion of these other employees in the bargaining unit should be resolved through collective bargaining. But settled Board law establishes that the scope of the bargaining unit is a permissive subject of bargaining, so AMP cannot compel resolution of whether particular employee classifications are inside or outside the bargaining unit in bargaining. Such issues must be resolved now.

As both sides agree that the AMP Operators from other facilities working at Smithland on temporary assignments lack a community of interest with the Smithland employees, the Board should reverse the Decision, revise the unit description consistent with AMP's position (and Petitioner's admissions regarding the employees at issue), vacate the certification, and direct another election be held in the resulting appropriate bargaining unit.

II. $\underline{\mathbf{FACTS}}^2$

A. AMP Has Assigned Operators From Other Facilities To Work At Smithland On A Temporary Basis.

AMP employs eight individuals in Operator I or Operator II job classifications³ at its Smithland, KY facility. (Decision p. 2) AMP and Petitioner agree that these eight individuals are appropriately included in the bargaining unit.

AMP also employs Operators at other AMP facilities, such as its Cannelton facility, also located in Kentucky. (<u>Id.</u> at 3)

AMP has assigned Operators from other AMP facilities to perform Operator work at Smithland on a temporary basis. As the Decision found, AMP temporarily assigned four

² For the Board's convenience, the Decision is attached as Exhibit 1. AMP will cite to the hearing transcript as Tr. __. Excerpts of the transcript are attached as Exhibit 2.

³ Because the distinction between the Operator I and Operator II job classifications makes no difference in this case, AMP will use the term Operator to encompass both job classifications.

Operators from Cannelton to Smithland in 2017. (<u>Id.</u>) These four Operators performed Operator work at Smithland for a total of more than ten days. (<u>Id.</u>)

AMP also assigned Joe Frakes, another Operator from Cannelton, to work at Smithland on a temporary basis in 2017 and 2018. (<u>Id.</u>) Frakes worked at Smithland for five days a week from about June 2017 to October 2017 and then about one day a week from October 2017 until mid-January 2018. (<u>Id.</u> at 3-4) Frakes last worked at the Smithland facility only days before the petition in this case was filed. (<u>Id.</u> at 2; Tr. 38) Frakes spent about half his time at Smithland performing Operator work. (Decision p. 4) Frakes is not a supervisor. (<u>Id.</u>)

AMP would temporarily assign Operators from other facilities to work at Smithland under various operational scenarios, such as where the Smithland Operators lacked the needed expertise to perform a necessary task or where there were staffing issues. (Decision p. 4; Tr. 42) AMP could also assign Operators from other facilities to work at Smithland during an outage (where AMP would want to increase staffing to decrease the downtime associated with the outage). (Tr. 57-58)

B. The Decision Approved A Unit Seemingly Including These Other Operators.

The Decision approved the following unit:

All full-time and regular part-time Operator I and Operator II employees employed by American Municipal Power, Inc. at its facility located at 1297 Smithland Dam Road, Smithland, Kentucky, excluding office clerical employees, professional employees, confidential employees, guards, and supervisors as defined in the Act.

(Decision p. 2)

The unit approved by the Decision appears to include the Operators from other AMP facilities working at Smithland on temporary assignments. These individuals are Operators.

(Decision pp. 3-4) They were employed by AMP at the Smithland facility, albeit temporarily.

The Decision rejected AMP's attempts to make it clear that Operators from other AMP facilities working at Smithland on temporary assignments are not in the unit. (Decision p. 2) Petitioner claimed that if AMP's proposed unit description were accepted, "the unit placement of employees temporarily performing bargaining unit work at the Smithland facility . . . would be a permissive subject of bargaining instead of a mandatory subject of bargaining. The Union does not want to acquiesce to an automatic exclusion of these employees from the bargaining unit and would prefer to bargain over their placement with the Employer should the issue arise in the future." (Id. at 3)

The Decision agreed with Petitioner on this point of law, stating: "Leaving the temporarily assigned employees out of the exclusions at this time leaves more room for the parties to adjust their unit description by negotiation, if they wish, in the event the Employer begins to assign such employees to Smithland." (Id. at 5) The Decision also found: "Furthermore, the concerns Petitioner raised in voluntarily agreeing to specifically exclude employees on temporary assignments are valid. The issue of temporary assignments from other facilities is not a unique issue and should the Petitioner become the certified representative of the petitioned-for unit, such an issue is one that is better resolved through the collective bargaining process." (Id. at 5-6)

As explained below, the Decision's legal conclusion is incorrect and led to the approval of an inappropriate unit that appears to include individuals who do not share a community of interest with the eight employees properly in the unit.⁴

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⁴ The Decision also excluded, without explanation, language excluding "all other employees" from the unit even though both AMP and Petitioner agreed to this exclusion. (Tr. 10) This agreed language should have been included as well.

III. ARGUMENT

The Decision should be reversed and the resulting certification vacated for any or all of the following independently sufficient reasons.

A. Operators Temporarily Assigned To Smithland Do Not Share A Community Of Interest With Operators Primarily Assigned To Smithland.

The fact that the Operators employed by AMP working at Smithland on temporary assignments do not share a community of interest with the eight Operators primarily assigned to Smithland is not disputed. At the hearing, Petitioner admitted under questioning from the Hearing Officer that Frakes should be **excluded from the bargaining unit based on a lack of a community of interest**. (Tr. 13-14)

Despite Petitioner's admission that the Operators temporarily assigned to Smithland do not have a community of interest with the Operators primarily assigned to Smithland, the Decision approved a unit that appeared to include them. The Decision did **not** find that the Operators temporarily assigned to Smithland share a community of interest with the Operators primarily assigned to Smithland. Nor could the Decision have done so on this record.

The Board should correct this error.

B. The Decision Approved The Unit Based On A Legal Error Regarding The Suitability Of Future Collective Bargaining To Address The Inclusion Of Operators Temporarily Assigned To Smithland In The Bargaining Unit.

As explained above, the Decision accepted Petitioner's argument that the placement of Operators temporarily assigned to Smithland in the bargaining unit should be addressed in future collective bargaining instead of in the representation proceeding. (Decision pp. 5-6)

In doing so, the Decision committed legal error. It is settled law that the scope of the bargaining unit is a **permissive** subject of bargaining. Raymond F. Kravis Ctr. for the Performing Arts, 351 NLRB 143, 144 (2007) ("The scope of the bargaining unit is a permissive

Assocs., Ltd., 336 NLRB 613, 617 (2001) (collecting cases) ("The Board has long held that '[u]nit scope is not a mandatory bargaining subject, and consequently a party may not insist to impasse on alteration of the unit.") (citations omitted); Branch Int'l Servs., 310 NLRB 1092, 1103 (1993) (accord); Chicago Beef Co., 298 NLRB 1039, 1049 (1990) (accord); Syncor Int'l Corp., 282 NLRB 408, 409 (1986) (accord). Accordingly, this issue cannot be resolved in collective bargaining over the objection of one party. As the unit description on its face appears to include Operators temporarily assigned to Smithland in the bargaining unit, AMP has no ability to compel a resolution of this issue outside of this proceeding.

The Board should correct this legal error.

C. The Decision Incorrectly Viewed This Issue As Academic.

The Decision appeared to rely on the fact that no Operators from other AMP facilities were **currently** working at Smithland at the time of the petition and that AMP did not have any **current** plans to assign Operators from other AMP facilities to work at Smithland in the immediate future. (Decision p. 5) ("Board law also supports omitting the placement of employees temporarily assigned to Smithland in the absence of any finite plans on the Employer's part to resume assigning these employees to that facility.")

The Decision's reliance on these facts was misplaced. AMP has a concrete, recent history of making such assignments. Four employees worked at Smithland on temporary assignments totaling more than ten days in 2017. (Id. at 3) Frakes worked at Smithland about five days a week from June 2017 to October 2017 and then about one day a week from October 2017 until January 2018. (Id. at 3-4) Frakes' assignment ended shortly before the petition was filed. (Tr. 38) The fact that the petition happened to be filed in late January (when Frakes was

not working at Smithland) as opposed to mid-January (when he was) should not have been given any weight by the Decision, much less seemingly controlling weight.

Furthermore, the Decision did not give proper weight to AMP's evidence of circumstances where it would make temporary assignments to Smithland in the future. AMP explained that it would make such assignments based on the need for particular expertise or in response to a severe staffing issue. (Decision p. 4) AMP further explained that it would make such assignments in response to an outage. (Tr. 57-58) These are not imaginary scenarios. The mere fact that AMP did not know at the moment of the hearing that one of them would occur in the immediate future was not a valid reason for the Decision to refuse to exclude these Operators from the unit when they undeniably lacked a community of interest with the Operators primarily assigned to Smithland.

The problem created by the Decision's failure to resolve the unit status of Operators from other plants working on temporary assignments at Smithland cannot be solved by finding these Operators ineligible to vote. The Board's policy is that unit placement and voting eligibility are inseparable issues; any employee who may be represented as the result of an election has the right to vote in that election. <u>Post Houses, Inc.</u>, 161 NLRB 1159, 1172-1173 (1966).

The Decision's failure to resolve the unit status of Operators from other plants working on temporary assignments at Smithland matters to AMP. If this issue remains unresolved, AMP could have to bargain over the terms and conditions of employment of Operators primarily assigned to other plants who lack a community of interest with the Operators primarily assigned to Smithland. Operators primarily assigned to other plants would have different and likely conflicting concerns compared to the Operators primarily assigned to Smithland (who may not want Operators from other plants working at Smithland at all). AMP needs to know the unit

status of Operators primarily assigned to other plants with certainty before productive bargaining can begin.

Because the Decision failed to resolve this issue, it should be reversed.

D. The Decision Incorrectly Relied On Inapplicable Board Law.

The Decision relied on inapplicable Board decisions involving unit clarification petitions to reach an incorrect conclusion. In Coca-Cola Bottling Co. of Wisconsin, 310 NLRB 844 (1993), the Board found the fact that production employees had been included in successive recognition clauses in collective bargaining agreements did not matter when the employer had ceased production operations for twelve years and had no production employees during this time. Id. at 844. Coca-Cola Bottling is distinguishable from AMP's case, where: (1) five Operators worked on temporary assignments at Smithland in the last year; (2) one of those Operators worked at Smithland regularly for about seven months before the petition; (3) this Operator worked at Smithland shortly before the petition was filed; and (4) there is no recognition clause.

The Decision's citation of <u>ITT World Communications</u>, 201 NLRB 1 (1973), is mistaken. In <u>ITT</u>, the Board dismissed a unit clarification petition because the employees at issue were statutory supervisors. <u>Id.</u> at 2. <u>ITT</u> has no bearing here.

The Board's decision in <u>Union Electric</u>, 217 NLRB 666 (1975), is also inapplicable. In that case, the Board observed that the petition for unit clarification was improper "where, as here, contractual and established exclusions are involved. Instead, the issues thus raised are . . . ones to be resolved through the collective-bargaining process or in a proceeding under Section 9(c) of the Act." <u>Id.</u> at 667. In AMP's case, there are no "contractual and established exclusions" involved. So collective bargaining cannot resolve the unit placement issue given the permissive nature of bargaining over the scope of the unit.

The Decision's attempt to distinguish Indiana Bottled Gas, 128 NLRB 1441 (1960) and F.W. Woolworth, 119 NLRB 480 (1957), is unavailing. (Decision p. 5) To be sure, AMP's case involves full-time AMP Operators primarily assigned to other plants and not temporary, casual, or seasonal employees. But that is not the point. The point is that individuals in disputed classifications need not be actively working in order to have their unit status resolved in a representation case. At the hearing, AMP demonstrated that it had assigned Operators from other plants to work at Smithland recently (five assignments in the last year, including one assignment lasting about seven months and ending shortly before the petition was filed). (Decision pp. 3-4; Tr. 38) And AMP explained several circumstances under which it would make such assignments in the future, including the need for expertise, staffing issues, and an outage at Smithland. (Decision p. 4; Tr. 57-58)

The coincidence that no Operators primarily assigned to other AMP plants happened to be working at Smithland at the moment the petition was filed and that AMP did not have definite plans to make such an assignment on the day of the hearing is not a valid reason to fail to resolve the unit placement issue in this case. Because the Decision refused to resolve the unit placement issue, it should be reversed.

E. The Decision Failed To Include An Agreed Exclusion.

The petition's unit definition included a general (and common) exclusion of "all other employees." (Decision p. 1) AMP sought to preserve this exclusion at the hearing. (Tr. 10) Petitioner stated that it was "good with that" exclusion. (Tr. 10)

The Decision failed to include this petitioned for and agreed exclusion in the unit definition and offered no reason for doing so. The Board should correct this failure.

F. The Board Should Set Aside The Certification And Direct Another Election In An Appropriate Unit.

AMP respectfully submits that the unit should be defined as follows (with additions to the unit approved by the Decision noted in bold):

All full-time and regular part-time Operator I and Operator II employees employed by American Municipal Power, Inc. and primarily assigned to its facility located at 1297 Smithland Dam Road, Smithland, Kentucky, excluding office clerical employees, professional employees, confidential employees, guards, supervisors as defined by the Act, and all other employees.

After the Board corrects the unit definition, the Board should vacate the certification and direct another election in the resulting appropriate unit. Because the original unit was not appropriate, the first election result should be set aside.⁵

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⁵ AMP recognizes that directing another election may seem odd when the same eight employees who voted in the first election could end up voting in the second election. This assumed fact (there could be Operator turnover in the interim) does not matter when the unit approved by the Decision was inappropriate. Sunrise, A Cmty. for the Retarded, Inc., 282 NLRB 252 (1986) (Board agreed that "unit on its face violates Section 9(b)(1) of the Act, but we disagree that the defect can be remedied simply by modifying the unit. Rather, because the election was held in an inappropriate unit, we find that the election must be set aside."); Burnet-Binford Lumber Co., Inc., 75 NLRB 421, 425 (1947) (setting aside election conducted in an inappropriate unit).

IV. <u>CONCLUSION</u>

For each and all of the foregoing reasons, the Board should grant AMP's request for review, revise the unit definition as set forth above to make it appropriate, vacate the certification, and direct another election in the resulting appropriate unit.

Respectfully submitted,

/s/ Kerry P. Hastings

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Attorney for American Municipal Power, Inc.

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing Request for Review was electronically filed with the National Labor Relations Board and served by e-mail on March 19, 2018 upon the following:

International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 816, c/o: Chad Donathan chad_donathan@ibew.org

John D. Doyle, Jr.
Regional Director
National Labor Relations Board
Region 10
john_doyle@nlrb.gov

Pursuant to 29 C.F.R. § 102.67(i), a true and accurate copy of the foregoing Request for Review has also been electronically filed with the Regional Director on March 19, 2018.

/s/ Kerry P. Hastings
Kerry P. Hastings

EXHIBIT 1

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 10

AMERICAN MUNICIPAL POWER, INC.

Employer

and

Case 10-RC-213684

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL UNION NO. 816

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner, International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 816, seeks to represent a unit of operator employees that the Employer¹ employs at its Smithland facility. The sole issue in this proceeding is whether the unit description needs to address the voting eligibility of employees from other Employer facilities that the Employer has in the past temporarily assigned to work in the Smithland facility. In the paragraphs that follow, I explain my basis for concluding that it is unnecessary to address their status in the unit description when there are no employees in that status and the Employer has no current plans to temporarily assign these employees to the Smithland facility in the future.

On January 26, 2018, the Union filed a petition with the Region seeking an election to become certified as the bargaining representative of certain employees of the Employer at its Smithland, Kentucky facility. The petitioned-for unit description is:

Included: All full-time and regular part-time employees of the Employer performing work at its facility located at 1297 Smithland Dam Rd., Smithland, KY 42081

Excluded: Office clerical employees, professional employees, guards, and supervisors as defined in the Act, and all other employees.

On January 29, 2018, the Union filed an amended petition to correctly note that it had requested voluntary recognition from the Employer on January 22, 2018 and the Employer had not yet responded.

A hearing officer of the National Labor Relations Board conducted the hearing in this matter on February 6, 2018, and gave all parties the opportunity to present evidence on the issues raised by the petition, to examine and cross-examine witnesses, and present arguments and case law in support of their positions.

¹ The Employer is an Ohio corporation that generates, transmits, and distributes electric power and energy to its member-consumers in Kentucky. Its headquarters is located in Columbus, Ohio, and it has a power generation facility located at 1297 Smithland Dam Road, Smithland, Kentucky, the only facility involved.

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Both the Employer and the Petitioner agree that employees who work at other facilities but who work temporarily at the Smithland facility should not be permitted to vote in this election. However, the dispute at the hearing is whether specifically to exclude these employees in the unit description, or whether to leave their status unanswered for now so that the parties may handle their placement through the collective-bargaining process should the issue arise in the future.

After reviewing the evidence, I find the following unit to be an appropriate for collective bargaining, and therefore, I am directing an election in this matter for the following unit:

All full-time and regular part-time Operator I and Operator II employees employed by American Municipal Power, Inc. at its facility located at 1297 Smithland Dam Road, Smithland, Kentucky, excluding office clerical employees, professional employees, confidential employees, guards, and supervisors as defined in the Act.

To provide a context for my discussion, I will first discuss the position of the parties and then provide my legal analysis to explain why I conclude the petitioned-for unit (as clarified during the hearing) is an appropriate and unambiguous unit and there is no need for additional language specifically excluding employees from other Employer facilities who temporarily work at the Smithland facility.

I. Position of the Parties

The Employer's primary argument is that the unit description should specifically exclude employees normally employed at other Employer facilities but temporarily assigned to the Smithland facility. The Employer made an offer of proof and also had one witness testify at the hearing. The Employer's evidence showed there are eight employees who work at the Smithland facility. The Employer further identified five other employees from other Employer facilities whom it had occasionally, sporadically, or periodically assigned to the Smithland facility.

The Employer argues that only the eight employees primarily assigned to work at the Smithland facility should be included in the unit. The Employer acknowledged at the hearing that it currently has no employees from other facilities temporarily assigned to work at the Smithland facility and it has not scheduled any employees to do so in the future. The Employer noted, however, there had been an employee temporarily working at the Smithland facility two days before the Petitioner filed the petition. The Employer argues these temporarily-assigned employees do not share a community of interest with the eight employees who primarily work at the Smithland facility. The Employer believes the petitioned-for unit is broad enough to cover employees who are temporarily assigned to work at the Smithland facility, and therefore the unit description should clearly state which employees are specifically included (for example, "employees primarily assigned to the Smithland facility"), or somehow specifically exclude employees who are primarily assigned to other facilities.

The Petitioner agrees that only the eight employees currently employed at the Smithland facility should be eligible to vote, but the Petitioner does not want to alter the unit description as the Employer suggests. The Petitioner contends that it used standard unit-description language to describe the petitioned-for unit and that this unit is appropriate and unambiguous. It argues that both the Employer and Petitioner agree as to the eight employees covered by the description evidences this. The Petitioner contends that, if it were to agree to the Employer's proposed unit description, the unit placement of employees temporarily performing bargaining unit work at the Smithland facility (should the Employer assign employees to do so in the future) would be a permissive subject of bargaining instead of a mandatory subject of bargaining. The Union does not want to acquiesce to an automatic exclusion of these employees from the bargaining unit and would prefer to bargain over their placement with the Employer should the issue arise in the future.

Thus, the only issue is whether the unit description should address the placement of employees from other Employer facilities temporarily assigned to the Smithland facility.

II. Factual Findings

The Employer operates power generation facilities located near dams. The Smithland facility is a relatively newer power generation facility that only began full operation in about May 2017. Employees began working at the Smithland facility prior to the facility becoming fully operational, with at least one employee starting in July 2016. Prior to the facility becoming fully operational and during the first months of full operations, some employees from another Employer facility, the Cannelton facility, spent days working at the Smithland facility. Four employees who worked as operators at the Cannelton facility held temporary assignments to the Smithland facility for just a few days at a time. Operator Woosley spent one day in April 2017 working with the Smithland employees. Operator Haycraft spent two days in April 2017 training and assisting Smithland facility employees. Operator Stewart spent three days in June 2017 and one day in July 2017 training Smithland facility employees. Lastly, Operator Harrell spent four days in March 2017 and some more time in July 2017 working with the Smithland employees.² All four of these employees came from the Cannelton facility and the work they did at the Smithland facility alongside other Smithland employees involved either training the Smithland employees in how to do their normal work, or assisting the Smithland employees with their normal operator work. As indicated by the dates of their work, it has been over six months since a Cannelton employee had a temporary assignment for less than a week of work at the Smithland facility, and the Employer acknowledged there was no current plan or schedule for any temporary assignments in the future.

An additional Cannelton employee held a temporary work assignment at the Smithland facility but the assignment differed from the four mentioned above. Cannelton employee operator Joe Frakes worked at the Smithland facility about five days a week from about June 2017 to October 2017 and then about one day a week from October 2017 until mid-January

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² Neither party provided evidence on how many days Mr. Harrell spent working at the Smithland facility during July 2017.

2018. Frakes spent about 50 percent of his time doing operator work alongside the other Smithland employees and the other 50 percent of his time doing administrative work to assist the Employer while there was an open supervisor position at the Smithland facility. The supervisor at the Smithland facility retired in June 2017 and it has taken longer than anticipated for the Employer to bring in a new supervisor. During this time, Director of Hydroelectric Operations Rod Woodward spent much of his time at the Smithland facility, and Frakes' administrative role was to assist Woodward by reviewing paperwork, approving purchase orders, and organizing electronic files for the sake of facilitating eventual transition to a new regular supervisor. Neither party asserted that Frakes was a supervisor and the evidence indicated Frakes works as an Operator II at the Cannelton facility in a non-supervisory capacity.

The Employer paid for the travel and required lodging for all five of these employees who worked temporarily at the Smithland facility. There is no evidence that the Employer changed the pay or job description of the five employees for their work at Smithland. All five employees engage in the same type of operator work at the Cannelton facility as the petitioned-for Smithland employees do at the Smithland facility, and their rates of pay at each facility are similar.

The evidence establishes that four of the five employees from other facilities who worked temporarily at the Smithland facility did so as part of the Employer's initiation of operations at Smithland. That facility is now fully operational. The fifth employee assisted a manager after the supervisor at the facility retired. None of them worked there based on an ongoing need for temporary help at that facility. Other than these five, no other employees from other Employer facilities have held a temporary work assignment to do operator work at the Smithland facility. The Employer also currently has no scheduled plans for any employees from other facilities to perform temporary work assignments at the Smithland facility. The Employer asserted it could conceive of an instance when it might need temporary work assignments, such as an operations issue requiring the additional expertise of some of the employees at the Cannelton facility, or if there was a severe staffing issue (for example due to sickness) and the Smithland facility needed some additional workers to make sure the facility kept running properly.

Regarding the appropriate unit description for eligible voters at the election, both parties appear to agree on many of the same inclusions and exclusions. During the hearing, the hearing officer offered a suggested stipulation that an appropriate unit would include "all full-time and regular part-time Operator I and Operator II employees employed by American Municipal Power, Inc. at its facility located at 1297 Smithland Dam Road, Smithland, Kentucky" and exclude "all office clerical employees, professional employees, confidential employees, guards, and supervisors as defined in the Act." The Petitioner agreed that this unit would be appropriate. The Employer had no objection to changing the inclusions to specifically name the job titles of Operator I and Operator II and to exclude confidential employees, but would not agree to the stipulation unless the unit description noted the included employees were those "primarily assigned" to the Smithland facility. The Petitioner did not agree to the Employer's proposed change to the included employees as being those "primarily assigned." The hearing officer noted what the parties did and did not agree to and moved on to the rest of the hearing.

III. Analysis

The Employer relies on *Indiana Bottled Gas*, 128 NLRB 1441 (1960), where the Board, in a decision and direction of election, specifically excluded temporary and casual employees from the voting unit description despite that the employer in that case did not then employ any temporary or casual employees. In a footnote, the Board explained that the employer had a history of employing part-time temporary employees during the employer's busy season, but these employees did not have any expectation of recall nor was there a practice of recalling these employees on a regular basis. Therefore, the Board specifically excluded "temporary and casual employees" in the unit description. Id. at 1443 fn. 3. The Employer also relies on FW Woolworth, 119 NLRB 480 (1957), as another example where the Board specifically excluded "intermittent" employees. Like the employer in *Indiana Bottled Gas*, the employer in *FW* Woolworth routinely hired these employees for busy seasons for a finite duration, and then let them go. Unlike the Employer in this case, who has no current plans to temporarily assign employees to Smithland, the employers in *Indiana Bottled Gas* and *FW Woolworth* consistently hired temporary or "intermittent" employees during their busy seasons and thus it made sense in those cases to settle their status notwithstanding that the employer had no such employees at the time of the hearing. There is no such concern compelling me to settle the status of the Employer's employees temporarily assigned to the Smithland facility.

Indiana Bottled Gas also involved temporary employees. The term "temporary employees" typically refers to employees who have a finite end date for their employment separate from permanent employees. See Marian Medical Center, 339, NLRB 127, 128 (2003). (The "intermittent" employees in FW Woolworth had the same status as the temporary employees in Indiana Bottled Gas.) The "temporary employees" in this case are actual permanent employees of the Employer who work at a different location and have only been "temporarily" assigned to the Smithland facility on an ad hoc basis. In the event the Employer changes plans and routinely assigns such employees to the Smithland facility in the future, there may be factors that make including them in the unit a more compelling argument than the truly ephemeral employees in Indiana Bottle Glass and FW Woolworth. Leaving the temporarily assigned employees out of the exclusions at this time leaves more room for the parties to adjust their unit description by negotiation, if they wish, in the event the Employer begins to assign such employees to Smithland.

Board law also supports omitting the placement of employees temporarily assigned to Smithland in the absence of any finite plans on the Employer's part to resume assigning these employees to that facility. In representation cases, "the Board looks to the actual, existing composition of units and to employees actually working to determine the composition of units." *Coca-Cola Bottling Co. of Wisconsin*, 310 NLRB 844, 844 (1993). For example, the Board has dismissed unit clarification petitions when the petitioned for classification had no actual employees within the classification. *ITT World Communications*, 201 NLRB 1, 2 (1973). Furthermore, the concerns the Petitioner raised in voluntarily agreeing to specifically exclude employees on temporary assignment are valid. The issue of temporary assignments from other facilities is not a unique issue and should the Petitioner become the certified representative of the

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petitioned-for unit, such an issue is one that is better resolved through the collective-bargaining process. *Union Electric*, 216 NLRB 666, 667 (1975).

Therefore, I find the petitioned-for unit (as clarified during the hearing) is an appropriate and unambiguous unit and there is no need for additional language specifically excluding employees who work at other Employer facilities not addressed in this petition.

IV. Conclusions and Findings

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

- 1. The hearing officer's ruling made at hearing are free from prejudicial error and are affirmed.
- 2. As the parties stipulated,
 - a. the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction here;
 - b. the Petitioner claims to represent certain employees of the Employer; and
 - c. the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
- 3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
- 4. The following employees of the Employer constitute a unit appropriate for the purpose of collective-bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Operator I and Operator II employees employed by American Municipal Power, Inc. at its facility located at 1297 Smithland Dam Road, Smithland, Kentucky, excluding office clerical employees, professional employees, confidential employees guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 816.

A. Election Details

The election will be held on Friday, February 23, 2018 from 6:30 a.m. to 7:30 a.m. and 6:30 p.m. to 7:30 p.m. (all times Central Time) at the Conference room at the Employer's facility located at 1297 Smithland Dam Road, Smithland, Kentucky 42081.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **February 11, 2018** including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Monday**, **February 19**, **2018**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on

American Municipal Power, Inc. Case 10–RC–213684

the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least three full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

American Municipal Power, Inc. Case 10–RC–213684

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: February 15, 2018

JOHN D. DOYLE JR.

REGIONAL DIRECTOR

NATIONAL LABOR RELATIONS BOARD

REGION 10

233 Peachtree Street NE

Harris Tower Suite 1000

Atlanta, GA 30303-1504

Form NLRB-707 (4-2015)



United States of America National Labor Relations Board



NOTICE OF ELECTION

<u>PURPOSE OF ELECTION</u>: This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

SECRET BALLOT: The election will be by SECRET ballot under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place. Violations of these rules should be reported immediately to an NLRB agent. Your attention is called to Section 12 of the National Labor Relations Act which provides: ANY PERSON WHO SHALL WILLFULLY RESIST, PREVENT, IMPEDE, OR INTERFERE WITH ANY MEMBER OF THE BOARD OR ANY OF ITS AGENTS OR AGENCIES IN THE PERFORMANCE OF DUTIES PURSUANT TO THIS ACT SHALL BE PUNISHED BY A FINE OF NOT MORE THAN \$5,000 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BOTH.

<u>ELIGIBILITY RULES</u>: Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off, and also include employees in the military service of the United States who appear in person at the polls. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are *not* eligible to vote.

<u>SPECIAL ASSISTANCE</u>: Any employee or other participant in this election who has a handicap or needs special assistance such as a sign language interpreter to participate in this election should notify an NLRB Office as soon as possible and request the necessary assistance.

<u>PROCESS OF VOTING</u>: Upon arrival at the voting place, voters should proceed to the Board agent and identify themselves by stating their name. The Board agent will hand a ballot to each eligible voter. Voters will enter the voting booth and mark their ballot in secret. DO NOT SIGN YOUR BALLOT. Fold the ballot before leaving the voting booth, then personally deposit it in a ballot box under the supervision of the Board agent and leave the polling area.

CHALLENGE OF VOTERS: If your eligibility to vote is challenged, you will be allowed to vote a challenged ballot. Although you may believe you are eligible to vote, the polling area is not the place to resolve the issue. Give the Board agent your name and any other information you are asked to provide. After you receive a ballot, go to the voting booth, mark your ballot and fold it so as to keep the mark secret. DO NOT SIGN YOUR BALLOT. Return to the Board agent who will ask you to place your ballot in a challenge envelope, seal the envelope, place it in the ballot box, and leave the polling area. Your eligibility will be resolved later, if necessary.

<u>AUTHORIZED OBSERVERS</u>: Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the voting place and at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.



United States of America National Labor Relations Board



NOTICE OF ELECTION

VOTING UNIT

EMPLOYEES ELIGIBLE TO VOTE:

Those eligible to vote are: All full-time and regular part-time Operator I and Operator II employees employed by American Municipal Power, Inc. at its facility located at 1297 Smithland Dam Road, Smithland, Kentucky, who were employed by the Employer during the payroll period ending February 11, 2018.

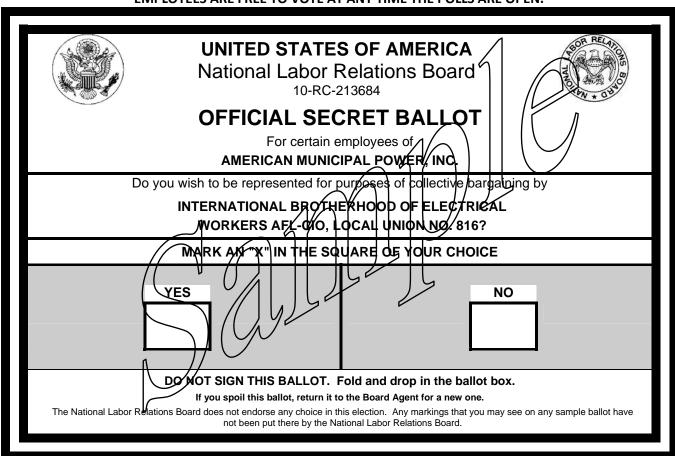
EMPLOYEES NOT ELIGIBLE TO VOTE:

Those not eligible to vote are: All office clerical employees, professional employees, confidential employees, guards, and supervisors as defined in the Act.

DATE, TIME AND PLACE OF ELECTION

	6:30 a.m. to 7:30 a.m. and	Conference room at the Employer's facility
Friday, February 23, 2018	6:30 p.m. to 7:30 p.m.	1297 Smithland Dam Road,
	(all times Central Time)	Smithland, KY

EMPLOYEES ARE FREE TO VOTE AT ANY TIME THE POLLS ARE OPEN.



Form NLRB-707 (4-2015)



United States of America National Labor Relations Board

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NOTICE OF ELECTION

RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities
- In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.

If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:

- Threatening loss of jobs or benefits by an Employer or a Union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or the mail ballots are dispatched in a mail ballot election
- Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a Union or an Employer to influence their votes

The National Labor Relations Board protects your right to a free choice.

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.

Anyone with a question about the election may contact the NLRB Office at (615)736-5921 or visit the NLRB website www.nlrb.gov for assistance.

EXHIBIT 2

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 10

In the Matter of:

American Municipal Power, Case No. 10-RC-213684

Employer,

and

International Brotherhood of Electrical Workers AFL-CIO IBEW Local Union No. 816,

Petitioner.

Place: Nashville, Tennessee

Dates: February 6, 2018

Pages: 1 through 97

Volume: 1

OFFICIAL REPORTERS eScribers, LLC E-Reporting and E-Transcription 7227 North 16th Street, Suite 207 Phoenix, AZ 85020 (602) 263-0885

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 10

In the Matter of:

AMERICAN MUNICIPAL POWER,

Case No. 10-RC-213684

Employer,

and

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO IBEW LOCAL UNION NO. 816,

Petitioner.

The above-entitled matter came on for hearing, pursuant to notice, before MEAGAN B. DOLLERIS, Hearing Officer, at the National Labor Relations Board, Region 10, Nashville Resident Office Hearing Room, 810 Broadway, Suite 302, Nashville, Tennessee 37203, on Tuesday, February 6, 2018, 11:43 a.m.

1	APPEARANCES				
2	On behalf of the Employer:				
3	MARK J. STEPANIAK, ESQ.				
4	TAFT, STETTINIUS & HOLLISTER LLP 425 Walnut Street, Suite 1800				
5	Cincinnati, OH 45202 Tel. (513)357-9380 Face (513)381 0305				
6	Fax (513)381-0205				
7	On behalf of the Union:				
_	BERT MCDERMITT, ESQ.				
8	INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS 5510 West 2nd Avenue				
9	Belle, WV 25015 Tel. (304)550-7272				
10					
11	CHAD DONATHAN, ESQ. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS 235 Juniper Court				
12	Mount Sterling, KY 40353				
13	Tel. (859)585-6088				
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- 1 read Operator I and Operator II. We think that the included
- 2 part of the described unit should include language like
- 3 primarily assigned to its facility at 1297 Smithland Dam in
- 4 order to differentiate them from AMP employees who are
- 5 occasionally temporarily job assigned to Smithland, which is
- 6 the essential issue we think for this hearing today.
- 7 And as far as the excluded, we don't object to -- to the
- 8 addition of confidential employees as an excluded
- 9 classification, but we think it should also include all other
- 10 employees of the Company.
- 11 HEARING OFFICER DOLLERIS: Okay. Mr. McDermitt, how does
- the Union feel about the inclusion of all other employees in
- 13 the excluded language? That question made no --
- MR. MCDERMITT: The --
- 15 HEARING OFFICER DOLLERIS: -- sense. How does the Union
- feel about "excluding," in quotes, all other employees?
- MR. MCDERMITT: We're good with that.
- 18 HEARING OFFICER DOLLERIS: Okay. Thank you.
- 19 So as I hear it, there is a stipulation to change the
- 20 petition essentially to be full-time and regular part-time
- Operator I and Operator II employees. That stipulation is
- 22 received.
- The stipulation to add confidential employees as an
- exclusion is received. But all other employees, I'm hearing
- 25 that you agree with that?



- 1 MR. STEPANIAK: Mr. Frakes should be excluded from the
- 2 bargaining unit as a person who is an employee of AMP but is
- 3 primarily assigned to the Cannelton facility; is only
- 4 sporadically and occasionally assigned to the Smithland
- 5 facility.
- 6 HEARING OFFICER DOLLERIS: Okay.
- 7 MR. STEPANIAK: So I have community of interest with the
- 8 eight employees identified on Exhibit B.
- 9 HEARING OFFICER DOLLERIS: Okay.
- MR. STEPANIAK: He should, therefore, be excluded
- specifically by its classification as an employee at Cannelton.
- 12 HEARING OFFICER DOLLERIS: Okay. Does the Employer
- believe he is a supervisor under the Act?
- MR. STEPANIAK: He is not a supervisor under the Act. He
- has none of Section 2(11) indicia supervisory status.
- 16 HEARING OFFICER DOLLERIS: Okay.
- MR. STEPANIAK: That's true in Cannelton and it's true
- when he's temporarily assigned to Smithland.
- 19 HEARING OFFICER DOLLERIS: Okay. Mr. McDermitt, what is
- the Union's position of whether Mr. Frakes should be included
- or excluded from the bargaining unit?
- MR. MCDERMITT: It's the position of the Union that he
- 23 should be excluded from the bargaining unit.
- 24 HEARING OFFICER DOLLERIS: And on what basis is that,
- you're basing that exclusion?



- 1 MR. MCDERMITT: On the community of interest.
- 2 HEARING OFFICER DOLLERIS: Okay. Does the Union believe
- 3 he is a supervisor under the Act?
- 4 MR. MCDERMITT: We do not have enough information at this
- 5 time to formulate an opinion on that, or confidential -- our
- 6 conversations with the employees, we believe that that is a
- 7 possibility based on their perception of his duties and
- 8 responsibilities.
- 9 HEARING OFFICER DOLLERIS: Okay. Thank you.
- 10 So at this time I would like to take an offer of proof
- from the Employer identifying each witness the Employer would
- call to testify concerning the issue and summarizing each
- 13 witness' testimony.
- MR. STEPANIAK: Okay. The Employer would call Ron
- Woodward. Ron Woodward is a management employee of AMP who has
- management responsibility over the Cannelton Dam as well as
- over the Smithland facility. Mr. Woodward has spent most of
- his time in the last six months working out of the Smithland
- 19 facility since there has been no immediate direct supervisor
- there since the retirement of the direct supervisor in June of
- 21 2017.
- Mr. Woodward, by virtue of working almost every day out at
- the Smithland facility, has firsthand knowledge, as well as
- 24 knowledge gained through receiving information in the ordinary
- course of business about work done by the eight Smithland



- 1 Would that include on occasion doing operator work in
- 2 Smithland?
- 3 A Yes. But mainly it was the same thing as checking our --
- 4 the paperwork we've got, you know, taking care of all -- say
- 5 these bills were -- yeah, we -- we received that work, or
- 6 whatever. It was mainly -- I don't want to say administrative,
- 7 but it actually was a lot of administrative.
- 8 And then if there were any issues that we had that needed
- 9 to be resolved or lessons learned or training or -- and I guess
- 10 you can call it training whenever you go out and you say, hey,
- 11 this is what happened in Cannelton, or whatever. That -- to
- me, that's -- that's training. But he would still maybe do
- physical work too. He may go out and whittle a PROFIBUS or go
- out and open a cabinet to see if something was the way it was
- 15 supposed to be.
- 16 Q Okay. And that was when he was -- also true when he was
- working the one day a week schedule?
- 18 A Yes.
- 19 Q Okay. You know when -- the last time Mr. Frakes performed
- this kind of work at the Smithland facility?
- 21 A I -- I don't have the exact date. Like I said, it was
- Wednesday, two to three weeks ago.
- Q Okay. Sometime in January of 2018?
- 24 A Yes.
- 25 Q Now, since the Smithland project had got underway, have



- 1 Cannelton or wherever pitches in --
- 2 A Correct.
- 3 Q -- and does these things? Okay.
- 4 MR. STEPANIAK: That's all the testimony I have for
- 5 Mr. Woodson (sic).
- 6 HEARING OFFICER DOLLERIS: Mr. McDermitt, or,
- 7 Mr. Donathan?

8 CROSS-EXAMINATION

- 9 Q BY MR. MCDERMITT: Mr. Woodward, thank you for your time
- 10 today. I appreciate that. Just a few questions for you.
- Now that Smithland's been operational for an extended
- 12 period of time, can you describe for us some instances where
- there may be a need for operators from Cannelton to come down
- 14 to Smithland?
- 15 A If there is a controls issue that needs the expertise or
- 16 the experience, then we would -- we would send somebody down if
- we couldn't resolve it on the phone. But it would be certain
- people on the certain instances. As far as, you know, somebody
- 19 getting sick, or whatever, and they can't make their shift,
- we've been able to go through all the flu and everything that's
- 21 happened. We've had people that had personal issues that they
- had to take care of and so forth. And we haven't brought any
- operator down to fill a scheduled shift.
- 24 Q And did I understand your testimony correctly that in most
- instances, that I heard, they came down from Cannelton early on



- 1 THE WITNESS: That's correct.
- 2 HEARING OFFICER DOLLERIS: Where is the next closest
- 3 facility to Smithland?
- 4 THE WITNESS: Meldahl, which is at Maysville, Kentucky, up
- 5 above and around Cincinnati, in that area there. You would go
- 6 through Louisville and then take a right at Cincinnati and go
- 7 up Bridgeville.
- 8 HEARING OFFICER DOLLERIS: All right. So a few hours
- 9 maybe?
- 10 THE WITNESS: It -- from Smithland?
- 11 HEARING OFFICER DOLLERIS: Yes.
- 12 THE WITNESS: It would be -- what, Smithland is three
- hours from Louisville, and it's an hour-and-a-half. So it
- would probably be five-and-a-half hours these lads may have
- 15 traveled. I don't know. But it's around five-and-a-half
- 16 hours, I would guess.
- 17 HEARING OFFICER DOLLERIS: Who is the supervisor at
- 18 Cannelton?
- 19 THE WITNESS: Matt McDaniel.
- 20 HEARING OFFICER DOLLERIS: And he's not one of the ones we
- 21 talked about? He's never been to Smithland?
- THE WITNESS: He's been there, but not --
- HEARING OFFICER DOLLERIS: Well, he's never worked at
- 24 Smithland?
- THE WITNESS: He's not worked at Smithland. He came down



- 1 when the -- the trash rake training went on, because there was
- 2 an issue with the -- the vendor for that unit. So he was more
- 3 or less observing.
- 4 HEARING OFFICER DOLLERIS: Okay. That's all I have for
- 5 now.
- 6 MR. STEPANIAK: Yeah. I just have very few.

7 REDIRECT EXAMINATION

- 8 Q BY MR. STEPANIAK: Are you familiar with the term outage?
- 9 A Yes, I am.
- 10 Q What's an outage?
- 11 A That's when you -- say you've got three units. If one
- 12 unit is down and we're doing some specific work, that would be
- an outage on that unit where you're doing maintenance on that
- 14 unit.
- 15 Q Okay. In the event of an outage, does AMP ever, you know,
- 16 refigure its scheduling? Does it ever have any impact on where
- it sends people or how it's scheduled?
- 18 A Of course, we -- whenever we schedule an outage, down time
- 19 is critical. We want to have a minimum amount of down time.
- 20 Usually if someone at one of the other facilities have -- had
- done this work, then if somebody will volunteer or wants to,
- they will send them down there to assist. We've had Cannelton
- operators go to one of the other facilities up river because --
- 24 to assist them in -- in an outage. But it's not something
- 25 that's normally done to -- on a small outage. This would be a

